



OLR RESEARCH REPORT

September 18, 2006

2006-R-0383

GRANDPARENTS' RIGHTS

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You asked for an explanation of Connecticut law on grandparents' custody of, and visitation with, their grandchildren.

SUMMARY

Grandparents in Connecticut can become the custodian of a grandchild in four ways. They can:

1. adopt the child after a court terminates both parents' rights to him,
2. ask the probate court to appoint them as the child's guardian,
3. be awarded custody by the Superior Court when the child's parents divorce, or
4. informally assume custody.

The first three methods provide the grandparents with legal rights in relation to the child and some protection against a parent's attempt to regain custody. The latter method provides no rights or protection.

The legislature passed a law last session that allows grandparents to give the Department of Children and Families contact information in orders to be notified the department's removal about a child who is (1) the subject of an abuse or neglect investigation or (2) under the agency's care or supervision. Even if the grandparents have not provided contact information, the commissioner must use her best efforts to notify them within 15 days after she has removed them from their parents' home (PA 06-37, effective October 1, 2006).

ADOPTION

Adoption creates a legal relationship of parent and child between people who are not parent and child by birth. Through court action, the adoptive parents gain the same legal duties toward the adopted child as they would toward a birth child. These are the obligation to care for and control the child and make major decisions affecting his or her education and welfare (CGS § 45a-604). Adoption usually involves the complete and final termination of the birth parents' rights.

Any legally competent person age 18 or over may become an adoptive parent by filing an application with the probate court. The court asks the Department of Children and Families (DCF) or a DCF-licensed agency to investigate to find out if he or she will be a fit parent. At a hearing, the court must consider the investigative findings and determine that the adoption is in the child's best interest.

GUARDIANSHIP

Removal of Parent as Guardian

Parents are the legal guardians of their children, which gives them the duty to care for and manage the children's' affairs. But the probate court can remove a parent as guardian and give guardianship to a grandparent or other party.

The process begins when the party seeking guardianship files a motion in the probate court (or the court can initiate the change on its own). The court orders an investigation, unless it determines one is not needed. DCF or a DCF-licensed agency conducts the investigation.

After the investigation the court holds a hearing to determine whether to (1) remove the parent as guardian and (2) appoint the applicant as guardian. In determining the first, it must find by clear and convincing evidence (the highest level of proof in a civil matter) that the parent:

1. consents to removal as guardian;
2. has abandoned the child, that is shows no reasonable degree of interest in, or concern or responsibility for, the child;
3. has failed to provide care, guidance, or necessary control over the child's physical, educational, emotional, or moral well-being; or
4. has physically abused the child or given access to the child to another person who abused him.

When deciding whether to appoint the applicant as guardian, the court considers the:

1. applicant's ability to meet on a daily basis the child's physical, educational, emotional, and moral needs;
2. child's wishes concerning a guardian, if he is sufficiently mature and able to form a preference;
3. existence of any established relationship between the child and the applicant; and
4. child's best interest.

A parent still has some rights even if he is removed as a child's guardian. The court may permit the parent to visit the child. And a parent who has been removed may apply to the court that removed him for reinstatement as guardian if he believes the factors that resulted in his removal have been resolved satisfactorily. The court must first hold a hearing to determine whether to reinstate him (CGS §§ 45a-609 to -621).

Other Forms of Guardianship

A sole parent or DCF can ask the probate court to appoint another adult as a child's coguardian. In considering this request, the court applies the same criteria as it does for a contested guardianship case (see above). If it agrees to the coguardianship, the court can make it effective immediately or when a specific event, such as the parent's mental incapacity, physical debilitation, or death, occurs. If the coguardianship is contingent on an event, the coguardian must submit a written affidavit that it has occurred before the guardianship becomes effective (CGS § 45a-616).

Instead of going through the probate court, a child's parents can also designate someone to assume guardianship if a specific event like those mentioned above occurs. The designation must be made in writing and witnessed by two people. In order for the guardianship to become effective, the “standby” guardian must produce a written, witnessed document signed under penalty for false statement that the contingent event has occurred (CGS §§ 45a-624 to -624g).

A parent can ask the probate court to appoint someone as temporary guardian for up to one year. The parent can do this if he or she is unable to care for a child for any reason, including illness and absence from home. The guardianship ends when the parent notifies the court and the temporary guardian (CGS § 45a-622).

CUSTODY

A grandparent or a related or unrelated third party can ask the Superior Court to give them legal custody over a child. This is most often sought when a child's parents are divorcing. Legal custody is like guardianship in that it is a court order giving the grandparent the right to care for and make decisions regarding the child's welfare. And, like guardianship it is not permanent; the court can modify its order at anytime, transferring custody back to a parent or to another adult.

To obtain legal custody, a person must file suit in Superior Court. If both parents consent to the custody change, the court is likely to grant it; if they do not, the applicant must prove (1) that being with his or her parents will harm the child's growth or development or (2) that the parents are unfit to care for their child. The court's decision is guided by the child's best interest.

Parents do not lose their rights when custody is transferred to a third party. The court may require them to pay child support and may give them visitation rights. And a parent can subsequently ask the court to modify its custody order and return the child to him or her (CGS § 46b-57).

Informal Custody

Connecticut has no laws governing informal custody arrangements between parents and grandparents. Written informal agreements are not legally enforceable and do not give grandparents any legal right to custody. They might give grandparents who are caring for their grandchildren the documentation they need to make decisions for the child, for example enrolling him in a school or obtaining medical records. They can also show that a parent has not abandoned the child, which may help if the parent wants to reclaim custody.

VISITATION

The U. S. and Connecticut Supreme courts have ruled that grandparents have no absolute right to visit with their grandchildren if their fit parents do not want them to (see OLR Reports 97-R-0020 and [2000-R-0644](#), enclosed). A Connecticut grandparent (or any other third party) can ask the Superior Court to grant a visitation order. The court can do so if it determines that the requestor (1) has had a parent-like relationship with the child for an extended period of time and (2) the parent's denial of visitation will cause the child actual, significant harm. The latter finding must be supported by clear and convincing evidence (*Crockett v. Pastore*,

259 Conn. 24 (2002)). If the child is old enough, the court will consider his or her wishes.

A visitation order does not give a grandparent any parental or guardianship rights to the child, nor does it create any financial obligation (CGS § 46b-59).

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